

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember Tommy Wells, Chairperson **TW**
Committee on the Judiciary and Public Safety

DATE: November 7, 2014

SUBJECT: Report on Bill 20-468, "Limitations on the Use of Restraints Act of 2014"¹

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OFFICE OF THE
SECRETARY

The Committee on the Judiciary and Public Safety, to which Bill 20-468, "Limitations on the Use of Restraints Act of 2014" was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

INTRODUCTION

Bill 20-468, the "Anti-Shackling of Incarcerated Pregnant Women Act of 2013" was introduced on September 17, 2013 by Councilmember Grosso, and co-sponsored by Councilmembers Alexander, Barry, Bonds, Bowser, Evans, Graham, Wells, Cheh, McDuffie, and Orange. It was referred to the Committee on the Judiciary and Public Safety, which held a public hearing on July 9. A summary of the testimony provided at the hearing is found below in section V.

Bill 20-468, renamed the "Limitations on the Use of Restraints Act of 2014," would limit the use of restraints on incarcerated pregnant women and youth under the custody of the Department of Corrections and the Department of Youth Rehabilitation Service,. The Committee

¹ The Committee changed the bill's short title to reflect the amendments outlined in this report.

made several amendments to the introduced bill. The substantive changes contained in the committee print are outlined in detail below.

BACKGROUND AND NEED

The Use of Restraints on Incarcerated Pregnant Women

The number of women in American prisons – along with the number of women giving birth in prison – continues to rise each year.² There are more than 200,000 women in U.S. prisons or jails each year,³ and roughly 6% or 12,000 of those women are pregnant at the time they are incarcerated.⁴

As of April 2014, there were 159 females in the District of Columbia Department of Corrections (“DOC”) system, comprising approximately seven percent of DOC’s total population.⁵ The median age of female inmates is 37.29 years.⁶ Approximately 25.7 percent of female inmates are incarcerated on violent or dangerous offenses, meaning nearly three of every four female inmates are being held for non-violent offenses.⁷ The median length of stay for females in DOC custody is 56.42 days.⁸

The United States is one of the last countries in the world that continues the demeaning practice of restraining pregnant women.⁹ We continue to restrain pregnant women who are incarcerated – a population that is already among the most vulnerable in our community – despite the fact that there is no data that suggests that the policy actually protects the safety of either the public or pregnant women themselves, nor does it help prevent attempts at escape.

Health risks to mother. The use of restraints on pregnant women can pose health risks to both the mother and the child. Pregnant women are already prone to falling or tripping due to the

² Although just 7.2% of the entire population is in prison or jail, the percentage of women behind bars exploded 757% between 1977 and 2004, a number nearly twice as great as the increase in the incarcerated male population during the same period. See Natasha A. Frost *et al.*, Women’s Prison Association, *Hard Hit: The Growth in the Imprisonment of Women*, p. 9 (2006).

³ Bureau of Justice Statistics, U.S. Department of Justice, *Prison Inmates at Midyear 2008: Statistical Tables*, p. 2-3 (2009), available at <http://bjs.gov/content/pub/pdf/pim08st.pdf> (last accessed on DATE).

⁴ Bureau of Justice Statistics, U.S. Department of Justice, *Women Offenders*, p. 8 (1999), available at <http://www.bjs.gov/content/pub/pdf/wo.pdf> (last accessed on DATE)..

⁵ DC Department of Corrections, *Facts and Figures*, April 2014, available at <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20n%20Figures%20April%202014.pdf> (last accessed on DATE)..

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Center for Reproductive Rights, *Fulfilling Unmet Promises: Securing and Protecting Reproductive Rights and Equality in the United States*, Supplemental Information for the 2013 Review of U.S. Compliance with the International Covenant on Civil and Political Rights 9 (2013), available at http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/CRR_ICCPR%20Shadow%20Report%202013_Final.pdf (last accessed on DATE).

higher center of gravity that pregnancy imposes.¹⁰ Restraining a pregnant prisoner could have the effect of exacerbating this existing vulnerability.

The process of labor can frequently involve unforeseen medical complications that require swift and decisive medical responses.¹¹ Imposing the additional hurdle of having to remove restraints from a prisoner in labor adds another layer of complexity for medical staff. It is frequently necessary for a delivering doctor to be able to manipulate the legs and pelvis of the mother in order to prevent injury to both the mother and the child, a practice that would be impeded by the use of restraints.¹²

Safety of correctional or medical staff. The primary justification for the use of restraints on incarcerated prisoners is to protect correctional and medical staff from potentially violent detainees. This justification generally is not applicable to pregnant women. In addition to posing less of a threat due to their pregnant or postpartum conditions, the overwhelming majority of incarcerated women are non-violent offenders who generally pose a reduced security threat.¹³ The data supports this assertion, as states that have taken steps to restrict the use of restraints on women in labor have not documented an instance of a pregnant prisoner attempting to cause harm or escape.¹⁴ Generally, prisoners undergoing any sort of medical procedure are accompanied by armed guards, and so the use of restraints on pregnant inmates is not only potentially dangerous, it is also a redundant measure.¹⁵

Possible violations of domestic and international law. Shackling pregnant prisoners may implicate multiple domestic and international legal principles. The 8th Amendment of the United States Constitution protects the rights of prisoners to be free from cruel and unusual punishment. Multiple jurisdictions have issued opinions that touch on the use of restraints on incarcerated women within the context of the 8th Amendment. The Supreme Court held in *Estelle v. Gamble* that prisons violate the Eighth Amendment when they act with “deliberate indifference to prisoner’s serious medical needs.”¹⁶ More specifically, the D.C. Circuit held in *Womens Prisoners of D.C. v. District of Columbia* that officials could not use “restraints on any woman in labor, during delivery, or in recovery immediately after delivery.”¹⁷

In addition to the extensive domestic jurisprudence, there are also multiple international treaties that are potentially violated by the practice of shackling pregnant women. The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*¹⁸, and the *United Nations Standard Minimum Rule for the Treatment of Prisoners*¹⁹

¹⁰ See *Nelson v. Correctional Medical Services* 583 F.3d 522 (8th Cir. 2009) (Where inmate’s feet were shackled to either side of a bed while she was in the late stages of labor.).

¹¹ See Jane E. Allen, *Shackled: Women Behind Bars Deliver in Chains Federal Prisons Ban Practice, But 40 States Still Allow Shackling of Incarcerated Pregnant Women*, ABC NEWS MED. UNIT, Oct 21, 2010, at 3.

¹² *Nelson*, 583 F.3d at 526.

¹³ Bureau of Just. Stats., U.S. Department of Justice., *Women Offenders* 8 (1999).

¹⁴ Adam Liptak, *Prisons Often Shackle Pregnant Inmates in Labor*, N.Y. Times, Mar. 2, 2006, at A16.

¹⁵ *Id.*

¹⁶ 429 U.S. 97, 104 (1976).

¹⁷ 93 F.3d 910, 918 (1996).

¹⁸ G.A. Res. 39/46; U.N. Doc. A/39/51 (1984).

¹⁹ U.N. Doc. A/CONF/611 (1955).

both prohibit the practice of shackling pregnant female prisoners. The U.N. Committee Against Torture has specifically criticized the United States for violating the *Convention Against Torture* by shackling pregnant prisoners²⁰.

Bill 20-468 prohibits the use of restraints on a woman or youth who is known to be pregnant or in post-partum recovery at any time, including while in transport to a medical facility or while receiving treatment at a medical facility. The bill includes an exception where the administrator of the place of confinement may authorize the use of restraints after making an individualized determination, at the time that the use of restraints is considered, that extraordinary circumstances apply and restraints are necessary to prevent injury to the woman or youth or others. The restraints must be the least restrictive available, but may not be leg irons or waist chains. The committee print also makes clear that nothing in the act is intended to restrict medical personnel treating the woman or youth from using restraints if such use is necessary to protect the health or safety of the woman or youth, her baby, or others.

The committee print also requires DOC to document every use of restraints and why the use of restraints was necessary. DOC would also be required to report annually to the Council a number of data points related to the use of restraints on pregnant women and youth.

For all the reasons explained above, the Committee recommends approval of this bill as amended.

II. LEGISLATIVE CHRONOLOGY

- | | |
|--------------------|---|
| September 17, 2013 | Bill 20-468, "Limitations on the Use of Restraints Act of 2014," is introduced by Councilmember Grosso, and co-sponsored by Councilmembers Alexander, Barry, Bonds, Bowser, Evans Graham, Wells, Cheh, McDuffie, and Orange |
| September 17, 2013 | Bill 20-468 is referred to the Committee on the Judiciary and Public Safety. |
| September 27, 2013 | Notice of Intent to Act on Bill 20-468 is published in the <i>District of Columbia Register</i> . |
| June 6, 2014 | Notice of a Public Hearing on Bill 20-468 is published in the <i>District of Columbia Register</i> . |
| July 9, 2014 | The Committee on the Judiciary and Public Safety holds a public hearing on Bill 20-468. |
| November 7, 2014 | The Committee on the Judiciary and Public Safety marks-up Bill 20-468. |

²⁰ CAT Conclusions 2006

III. POSITION OF THE EXECUTIVE

Thomas Faust, Director, Department of Corrections, testified on behalf of the Executive on Bill 20-468. Mr. Faust stated that the Council would need to strike the appropriate balance between safeguarding the health and welfare of a pregnant woman, against DOC's responsibility to ensure the safety of district employees, medical staff, and the general public. Mr. Faust stated that there are critical distinctions between the populations of arrestees in custody of MPD and individuals that have already been committed to DOC or DYRS.

Mr. Faust testified that since 2011, there have been a total of 6,723 female jail admissions. Of that total, 245 females have been pregnant during incarceration, which represents 3.6% during this period. Eleven of the 245 incarcerated pregnant females have gone into labor and given birth.

Mr. Faust stated he believed that the bill is too broad to balance the inmate's medical concerns against serious penological interests in safety and security. Mr. Faust suggested that the use of restraints should be prohibited outright in the third trimester and during labor and delivery, absent extraordinary circumstances, and allow as an exception no restraints in the first and second trimester where specifically recommended by a medical clinician. Mr. Faust stated that this suggestion follows the position of the American Medical Association's adopted resolution supporting restrictions on the use of restraints.

Mr. Faust also noted the risk involved when informing inmates of changes in security protocols. Mr. Faust stated that generally neither male or female inmates are provided the dates of their appointments for medical care outside the facility. Mr. Faust stated that this security procedure protects against advance planning for security compromises such as escapes and passing of contraband. Mr. Faust also expressed concern that the bill would ask DOC to maintain data from a range of District agencies.

Dionne Hayes, General Counsel, Department of Youth Rehabilitation Services, testified on behalf of the Executive on Bill 20-468. Ms. Hayes expressed concern that the reporting requirements in the bill would compromise the confidentiality of the young people in DYRS custody, even where standard redaction process was utilized.

Ms. Hayes also criticized the bill as being overly broad, and applying to youth who may be in such an early phase of their pregnancy that the anti-shackling requirement might not obviously attach. Finally, Ms. Hayes noted that the authority granted to "wardens" was not applicable at DYRS facilities because those facilities have no such position.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY AND STATEMENTS

The Committee on the Judiciary and Public Safety held a public hearing on Bill 20-468 on July 9, 2014. The testimony summarized below is from that hearing. A copy of the witness list is attached to this report; the video recording of the hearings (available online at http://oct.dc.gov/services/on_demand_video/channel_13.asp) is incorporated by reference. A copy of submitted testimony is part of the hearing record and is available through the Office of the Secretary.

The following witnesses testified at the hearing:

Maneka Sinha, Supervising Trial Attorney, testified in support of Bill 20-468. Ms. Sinha stated that the United States is one of the last countries in the world that continues the needless and demeaning practice of shackling pregnant women. Ms. Sinha suggested a number of amendments to Bill 20-468 to clarify that the bill covers incarcerated girls in the custody of DYRS. Ms. Sinha stated that enacting this bill would be taking a positive step towards meeting the human rights and medical communities' recommendation to end the inhumane practice of shackling pregnant women.

Sonam Henderson, testified in support of Bill 20-468, but focused his testimony on the District's practice of indiscriminately shackling of children in courtrooms. In the District, every child detained is shackled throughout his or her hearings, with no regard to his or her age, size, or circumstances, and with no determination as to whether shackles are actually necessary. Mr. Henderson stated that this is a result of a blanket policy of the United States Marshals Service that applies to all detained defendants in federal courts around the country, with no distinction made between adults and children. Mr. Henderson noted that the Florida Supreme Court has referred to indiscriminate child shackling as "repugnant, degrading, humiliating, and contrary to the . . . primary purpose of the juvenile justice system."

Emily Harrison, Law Fellow, ACLU of the Nation's Capital, testified in support of Bill 20-468. Ms. Harrison stated that of the more than 200,000 women in the United States prisons or jails each year, about 6%, or 12,000, of those women are pregnant when they were incarcerated. Ms. Harrison suggested a number of amendments to the bill, as the bill, as drafted, appears to only apply to those women who are actually in labor.

Carolyn Beth Sufrin, MD, PhD, Assistant Professor, University of California, San Francisco (No Written Statement), testified in support of Bill 20-468. Dr. Sufrin testified about the difficulty of performing important medical procedures when a woman is shackled. Ms. Sufrin also noted that small probability that a woman in labor would flee. In fact, in all of Ms. Sufrin's experience, she has never heard of a pregnant women absconding during labor.

Rebecca Turner, D.C. Prisoners' Project, Washington Lawyers' Committee for Civil Rights and Urban Affairs (No Written Testimony), testified in support of Bill 20-468. Ms. Turner stated that ensuring that the bill is properly enforced is crucial, as some jurisdictions that have restricted the use of shackles still have troubles actually implementing the law. Ms. Turner

noted that the practice of using shackles is cruel and serves no legitimate safety purpose, as pregnant inmates, most of whom committed non-violent crimes, do not pose any threat of flight.

Peggy Ye, MD, MPH, DC Junior Fellow, American Congress of Obstetricians and Gynecologist, testified in support of Bill 20-468. Dr. Ye stated that current Department of Corrections regulations only addresses shackles on women who are in their last trimester of pregnancy, yet there are numerous reasons to refrain from the use of shackles not only during labor and delivery but throughout the pre- and postnatal periods as well. Dr. Ye testified that Bill 20-468 will enable her to “safely provide care to [her] patients and promptly diagnose or treat medical emergencies without the threat of shackles.” Dr. Ye also shared the her experiences, as well as those of her colleagues, delivering children of incarcerated women.

VI. IMPACT ON EXISTING LAW

Bill 20-468 would establish a new freestanding act that would prohibit the use of restraints on pregnant women and youth, except where an individualized showing of need was made. The bill would strictly prohibit the use of restraints on prisoners who were in labor.

The bill would also impose reporting requirements on institutions for instances in which they found it necessary to use restraints on a pregnant inmate, and also establish notice requirements so that detention facility staff are made aware of the new requirements effectively.

VII. FISCAL IMPACT

The attached November 6, 2014 Fiscal Impact Statement from the Chief Financial Officer states that funds are sufficient to implement Bill 20-468. This legislation requires no additional resources or personnel.

VIII. SECTION-BY-SECTION ANALYSIS

- | | |
|------------------|--|
| <u>Section 1</u> | States the short title of Bill 20-468. |
| <u>Section 2</u> | Provides definitions for several terms within the bill. |
| <u>Section 3</u> | (a) Prohibits use of restraints on pregnant women or youth, with exceptions;
(b) Establishes exception allowing administrator to use limited restraints in certain situations;
(c) Prohibits use of restraints on any inmate who is in labor;
(d) Provides exception for medical staff to use restraints to protect safety of anyone involved, including mother, child, or staff. |
| <u>Section 4</u> | Reporting Requirements. |
| <u>Section 5</u> | Notice Requirements. |

Section 6 Adopts the fiscal impact statement.

Section 7 Provides the effective date.

IX. COMMITTEE ACTION

On November 7, 2014, the Committee met to consider Bill 20-468. The meeting was called to order at 11:50 AM, and Bill 20-468 was the first item on the agenda. After ascertaining a quorum (Chairperson Wells and Councilmembers Evans, Cheh, and Bonds and Councilmember Grosso present), Chairperson Wells moved the print, with leave for staff and the General Counsel to make technical and conforming changes.

Councilmember Cheh began the discussion by encouraging the Chair to further consider measures to restrict the shackling of youths in the detention system. The Chair shared Councilmember Cheh's concern, and noted the issue likely warranted its own hearing. Councilmember Cheh agreed and declined to so amend the bill.

After discussion, the vote to approve the print was unanimous. Chairperson Wells then moved the report, with leave for staff to make technical, editorial, and conforming changes. After an opportunity for discussion, the vote to approve the report was unanimous.


The meeting adjourned at 12:15 PM.

X. ATTACHMENTS

1. Bill 20-468 as introduced.
2. Witness list.
3. Fiscal impact statement.
4. Legal sufficiency determination by the General Counsel.
5. Comparative Print.
6. Committee Print for Bill 20-468.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Members of the Council

From: Nyasha Smith, Secretary to the Council
Date: September 23, 2013
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, September 17, 2013. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Anti-Shackling of Incarcerated Pregnant Women Act of 2013",
B20-0468

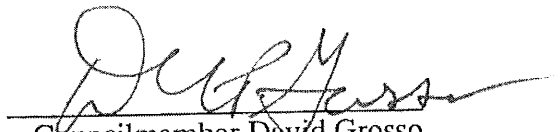
INTRODUCED BY: Councilmember Grosso

CO-SPONSORED BY: Councilmembers Evans, Alexander, Barry, Wells,
Graham, Bonds, Bowser, Cheh, McDuffie and
Orange

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety with comments from the Committee on Human Services.

Attachment

cc: General Counsel
Budget Director
Legislative Services


Councilmember David Grosso

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Grosso introduced the following bill, which was referred to the Committee on

_____.

To establish that no women or youth, who are pregnant while in the custody of the District of Columbia Central Detention Facility (DC Jail), the Correctional Treatment Facility, Halfway Houses, or lock-ups can be shackled at any time while they are pregnant, during labor, transport to a medical facility for treatment related to the birth, during delivery, or during post-partum recovery up to six weeks. This act requires the Department of Corrections, the Metropolitan Police Department, Halfway Houses, and the Department of Youth Rehabilitative Services to collect and publish data about their shackling practices and provide the appropriate training for their staff and notice to incarcerated persons about this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anti-Shackling of Incarcerated Pregnant Women Act of 2013."

Sec. 2. Definitions.

(a) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(b) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, of at least six weeks or more if, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

1 (c) "Restraints" means any physical restraint or mechanical device used to control the
2 movement of a person's body or limbs.

3 Sec. 3. Use of Restraints.

4 (a) The person(s) in charge of a correctional facility shall not permit restraints of any kind
5 on an incarcerated pregnant woman or youth known to be pregnant and in labor or delivery at
6 any time, including while in transport to a medical facility or while receiving treatment at a
7 medical facility or hospital, except as provided in subsection (b) of this section.

8 (b) In extraordinary circumstances, where the warden or acting warden of the correctional
9 facility or the shift commander for the Metropolitan Police makes an individualized
10 determination that restraints are necessary to prevent an incarcerated pregnant woman or youth
11 from escaping, or from injuring herself, medical or correctional personnel, or others, such
12 woman or youth may be restrained. The restraints used must be the least restrictive available and
13 the most reasonable under the circumstances, but in no case shall leg irons or waist chains be
14 used on any pregnant woman or youth. In no case may such restraints be used on a woman or
15 youth who is in labor unless the physician treating the patient determines that therapeutic
16 restraints are necessary.

17 (c) If the doctor, nurse, or other health professional treating the pregnant woman or youth
18 requests that restraints not be used; the Metropolitan Police officer or Department of Corrections
19 officer or staff member accompanying the pregnant woman or youth shall immediately remove
20 all restraints.

21 (d) In each individual instance in which restraints are used, the Warden , Director of the
22 Department of Youth Rehabilitative Services, Metropolitan Police shift officer on duty during
23 the shackling, or case manager at the half house shall make and maintain written findings to the

1 Director of the Department of Corrections for review within ten days of using the restraint as to
2 the reasons for such use and if the use was proper the Department of Corrections Director must
3 request a statement from the physician if restraints were used on hospital or medical facility
4 grounds These findings shall be kept on file by the correctional facility for at least twenty years
5 and be made available for public inspection in the Department of Correction's quarterly reports.
6 The Department of Corrections and the Department of Youth Rehabilitative Services shall
7 present this information annually to the Council of the District of Columbia during their
8 scheduled oversight hearing. Information presented must not include individually identifying
9 information of any incarcerated pregnant woman or youth shall be made public without the
10 written authorization of the woman or youth.

11 Sec. 4. Department of Corrections Requirements.

12 (a) The DC Department of Corrections (DOC) Director shall require that all staff at the
13 correctional facilities that are responsible for carrying out the requirements of this act be trained
14 in the requirements of this act. The initial training shall be completed within six months of the
15 effective date of this section. All staff who are hired after the initial training, in a correctional
16 facility where women or youth are or may become pregnant, shall be trained in the requirements
17 of this act before participating in the transportation of women or youth who are or may become
18 pregnant.

19 (b) The DOC director shall provide notice of the requirements of this act to the
20 appropriate staff at correctional facility. Appropriate staff shall include all medical staff and staff
21 and contractors who are involved in the transport of women and youth of child bearing age, as
22 well as such other staff as the director deems appropriate.

1 (c) The DOC director shall cause the requirements of this act to be provided to all
2 women or youth who are or may become pregnant, at the time the DOC assumes custody of the
3 person. In addition, the DOC director shall cause a notice containing the requirements of this act
4 to be posted in conspicuous locations in the correctional facility, including but not limited to the
5 locations in which medical care is provided within the facility.

6 Sec. 5. Metropolitan Police Department Requirements.

7 (a) The Metropolitan Police Department (MPD) chief of police shall require that all staff
8 at the institutions or facility that is responsible for carrying out the requirements of this act be
9 trained in the requirements of this act. The initial training shall be completed within six months
10 of the effective date of this section. All staff who are hired after the initial training, in an
11 institution or facility where women or youth are or may become pregnant, shall be trained in the
12 requirements of this act before participating in the transportation of women or youth who are or
13 may become pregnant.

14 (b) The MPD chief of police shall provide notice of the requirements of this act to the
15 appropriate staff at institutions or facilities. Appropriate staff shall include all medical staff and
16 staff who are involved in the transport of women and youth who are or may become pregnant, as
17 well as such other staff as the sheriff or police chief deems appropriate.

18 (c) The MPD chief of police shall cause the requirements of this act to be provided to all
19 women or youth who are or may become pregnant, at the time the District of Columbia assumes
20 custody of the person. In addition, the chief of police shall cause a notice containing the
21 requirements of this act to be posted in conspicuous locations in the institutions or facilities,
22 including but not limited to the locations in which medical care is provided within the facilities.

23 Sec. 6. Data Collection.

1 (a) A correctional institution shall report each restraint applied to a pregnant prisoner or
2 detainee, or any grievances and complaints filed by prisoners related to shackling to the Warden
3 of the institution who must then Director of the Department of Corrections. The report must be
4 made within ten days, must be in writing, and must note the number of restraints. Individual,
5 separate written findings for each restraint must accompany the report. This report shall include
6 the following:

7 (1) The circumstances that led to the determination that the prisoner or detainee
8 represented a substantial risk of imminent flight; or

9 (2) The circumstances that led to the determination that other extraordinary
10 medical or security circumstances dictated the prisoner or detainee be restrained to ensure the
11 safety and security of the prisoner or detainee, the staff of the correctional institution or medical
12 facility, other prisoners or detainees or the public.

13 (3) The Director of the Department of Corrections must request in writing a
14 statement from the attending physician at the medical center and from the correctional facility's
15 nurse and doctor on staff at the time that restraints were used. This request and the response
16 must be added to the file, published in the quarterly report, and reported to the District of
17 Columbia Council during annual oversight hearings.

18 Sec. 7. Fiscal Impact Statement.

19 The Council adopts the fiscal impact statement of the Budget Director or the Chief
20 Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of
21 Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 –
22 206.02(c)(3)).

23 Sec. 8. Effective date.

1 This act shall take effect following approval of the Mayor (or in the event of veto by the
2 Mayor, action by the Council to override the veto), and 30-day period of Congressional review
3 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
4 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
5 Columbia Register.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004
Agenda and Witness List

**COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**BILL 20-793, "CIVIL MARRIAGE DISSOLUTION EQUALITY CLARIFICATION
AMENDMENT ACT OF 2014"**

BILL 20-760, "REPEAL OF PROSTITUTION FREE ZONES AMENDMENT ACT OF 2014"

and

**BILL 20-468, "ANTI-SHACKLING OF INCARCERATED PREGNANT WOMEN ACT OF
2013"**

**Wednesday, July 9, 2014
11 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Agenda and Witness List

A. CALL TO ORDER

B. OPENING REMARKS

**C. BILL 20-793 "CIVIL MARRIAGE DISSOLUTION EQUALITY
CLARIFICATION AMENDMENT ACT OF 2014"**

PUBLIC WITNESSES

- | | |
|--------------------------------------|--|
| 1. Michael Sindram (absent) | DC Justice for All/ Disabled Veteran |
| 2. Richard Rosendall | Secretary, Gay and Lesbian Activists Alliance
(GLAA) |
| 3. Nancy D. Polikoff | Professor of Law, American University Washington
College of Law |

GOVERNMENT WITNESS

- | | |
|--------------------|---------------------------------------|
| 1. Phillip Husband | General Counsel, Department of Health |
|--------------------|---------------------------------------|

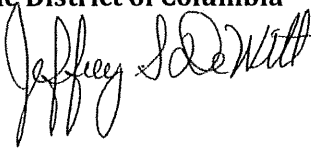
Government of the District of Columbia
Office of the Chief Financial Officer



Jeff DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeff DeWitt
Chief Financial Officer 

DATE: November 6, 2014

SUBJECT: Fiscal Impact Statement – Limitations on the Use of Restraints
Amendment Act of 2014

REFERENCE: Bill 20-468, Draft Committee Print as shared with the Office of Revenue
Analysis on October 27, 2014

Conclusion

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill.

Background

The bill prohibits the use of restraints on all pregnant woman or youth, including those in post-partum recovery, housed in a penal institution or other facility controlled by the Department of Corrections (DOC) or the Department of Youth Rehabilitative Services (DYRS) with limited exceptions.¹ When restraints are used, they must be the least restrictive available, be removed immediately at the request of a health professional, and can never be used during labor.

DOC and DYRS must provide notice regarding the restraint restrictions to any woman or youth who is or may become pregnant at the time the place of confinement takes custody of the individual. If restraints are used while in custody, the Administrator of the confinement facility must report to the director of his or her respective agency within ten days with a justification as to the extraordinary circumstances which resulted in the use of restraints.

DOC is also required to report annually to Council all statistics regarding confined pregnant women, the frequency with which restraints are used, and the extraordinary circumstance, which justified their use.

¹ Exceptions are permitted only under extraordinary circumstances where the restraints are necessary to protect the safety of the woman or medical and correctional personnel.

The Honorable Phil Mendelson

FIS: Bill 20-468, "Limitations on the Use of Restraints Amendment Act of 2014," Draft Committee Print as shared with the Office of Revenue Analysis on October 27, 2014

Financial Plan Impact

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill.

DOC currently has procedures that prohibit the use of restraints during labor and post-partum recovery. The costs associated with extending the prohibition to all pregnant women and implementing notice and reporting requirements can be absorbed within the agency's existing resources.

DYRS can absorb any costs associated with implementation of the bill.



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
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(202) 724-8026

MEMORANDUM

TO: Councilmember Tommy Wells

FROM: V. David Zvenyach, General Counsel

DATE: November 6, 2014

RE: Legal sufficiency determination for Bill 20-468,
Limitations on the Use of Restraints Act of 2014



Certified by V. David Zvenyach
General Counsel
Council of the District of Columbia

The measure is legally and technically sufficient for Council consideration.

Bill 20-468 sets forth limitations on the use of restraints on woman or youth confined to a penal institution under the control of the Department of Corrections or the Department of Youth Rehabilitation Services that are known to be pregnant, in labor, or in post-partum recovery. Bill 20-468 also provides for notice requirements regarding the provisions of that bill and reporting requirements for instances in which restraints are used.

I am available if you have any questions.

VDZ

1 COMMITTEE PRINT
2 COMMITTEE ON JUDICIARY AND PUBLIC SAFETY
3 NOVEMBER 7, 2014
4
5

6 A BILL

7
8 20- 468
9

10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

11
12 To prohibit the use of restraints on a confined woman or youth known to be pregnant or to be in
13 post-partum recovery, except when an individualized determination is made that
14 extraordinary circumstances exist and restraints are necessary to prevent the woman or
15 youth from injuring herself or others; to require places of confinement to give notice to
16 relevant staff and to women and youth who are known to be pregnant or to be in post-
17 partum recovery; and to require places of confinement to report instances in which
18 restraints are used.
19

20 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
21 act may be cited as the “Limitations on the Use of Restraints Act of 2014”.

22 Sec. 2. Definitions.

23 (a) “Administrator” means the warden of the penal institution, the director of a facility
24 under the control of the Department of Corrections, the superintendent of the secure residential
25 facility, or the director of the facility under the control of the Department of Youth Rehabilitation
26 Services.

27 (b) “Confined” means housed, detained, or serving a sentence or commitment in a penal
28 institution or other facility under the control of the Department of Corrections or in a secure
29 residential facility or other facility under the control of the Department of Youth Rehabilitation
30 Services.

31 (c) “Labor” means the period of time before a birth during which contractions are of
32 sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of

1 the cervix and shall include any medical condition in which a woman is sent or brought to a
2 medical facility for the purpose of delivering her baby.

3 (d) "Medical facility" shall include a hospital, birthing center, or clinic.

4 (e) "Penal institution" shall have the same meaning as provided in section 2(6) of An Act
5 To prohibit the introduction of contraband into the District of Columbia penal institutions,
6 effective December 10, 2009 (55 Stat. 800; D.C. Official Code § 22-2603.01(6)).

7 (f) "Postpartum recovery" means the entire period a woman or youth is in the hospital,
8 birthing center, or clinic after giving birth and any additional time period, as determined by her
9 physician, that is necessary for healing after the woman or youth leaves the medical facility.

10 (g) "Restraints" means a physical restraint or mechanical device used to control or bind
11 the movement of a person's body or limbs.

12 (h) "Secure juvenile residential facility" shall have the same meaning as provided in
13 section 2(7) of An Act To prohibit the introduction of contraband into the District of Columbia
14 penal institutions, effective December 10, 2009 (55 Stat. 800; D.C. Official Code § 22-
15 2603.01(7)).

16 Sec. 3. Use of restraints by places of confinement.

17 (a) Except as provided in subsections (b), (c), and (d) of this section, no confined woman
18 or youth who is known to be pregnant or to be in post-partum recovery shall be put in restraints
19 at any time, including while in transport to a medical facility or while receiving treatment at a
20 medical facility.

21 (b)(1) The Administrator may authorize the use of restraints on a confined woman or
22 youth known to be pregnant or in post-partum recovery after making an individualized
23 determination, at the time that the use of restraints is considered, that extraordinary

1 circumstances apply and restraints are necessary to prevent the woman or youth from injuring
2 herself or others, including medical or correctional personnel.

3 (2) The restraints used must be the least restrictive available and the most
4 reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any
5 confined woman or youth known to be pregnant or in post-partum recovery.

6 (3) Notwithstanding the authorization by the Administrator of the use of restraints
7 on a confined woman known to be pregnant or in post-partum recovery, if the doctor, nurse, or
8 other health professional treating the woman or youth requests that restraints not be used, the
9 restraints shall be removed immediately.

10 (c) The Administrator shall not authorize the use of restraints on a confined woman or
11 youth who is in labor.

12 (d) Nothing in this act is intended to restrict the ability of a physician, nurse, or other
13 health professional who is treating a confined woman or youth who is in labor to authorize staff
14 at the medical facility to use restraints if the physician, nurse, or health professional determines
15 that the use of restraints is necessary to protect the health or safety of the woman or youth, her
16 baby, or others, including medical or correctional personnel.

17 Sec. 4. Reporting requirements.

18 (a)(1) Within 10 days of the Administrator authorizing the use of restraints pursuant to
19 section 3, the Administrator shall submit a written statement to the Director of the Department of
20 Corrections in the case of confined women or to the Director of the Department of Youth
21 Rehabilitation Services in the case of confined youth explaining the extraordinary circumstances
22 and the reasons the use of restraints were necessary.

1 (2) The written statement must not include personal identifying information of the
2 confined pregnant woman or youth on whom restraints were used.

3 (b) Beginning January 1, 2016, and on an annual basis thereafter, the Department of
4 Corrections shall provide the following information to the Council:

5 (1) The number of pregnant women in DOC custody during the reporting period;

6 (2) The number of pregnant women on whom restraints were used;

7 (3) The number of times restraints were used on each pregnant woman;

8 (4) For each use of restraints on a pregnant woman, the duration of time that
9 restraints were used; and

10 (5) For each use of restraints on a pregnant woman, whether restraints were used
11 because of:

12 (i) Risk of flight;

13 (ii) Risk of injury to the pregnant woman; or

14 (iii) Risk of injury to other persons.

15 Sec. 5. Notice Requirements.

16 (a) The Administrator shall provide notice of the requirements of this act to:

17 (1) The relevant staff at the place of confinement, including:

18 (A) All medical staff;

19 (B) Staff and contractors who are involved in the transport of women and
20 youth of child bearing age; and

21 (C) Other staff as the Administrator deems appropriate; and

22 (2) All women or youth who are pregnant or of child bearing age, at the time the
23 place of confinement takes custody of the person.

1 (b) The Administrator shall cause written notice containing the requirements of this act to
2 be posted in the locations in which medical care is provided within the facility.

3 Sec. 6. Fiscal impact statement.

4 The Council adopts the fiscal impact statement in the committee report as the fiscal
5 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
6 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 – 206.02(c)(3)).

7 Sec. 7. Effective date.

8 This act shall take effect following approval of the Mayor (or in the event of veto by the
9 Mayor, action by the Council to override the veto), and 30-day period of congressional review
10 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
11 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
12 Columbia Register.